



Employee Plans

# The Future of the Determination Letter Program

Voluntary Compliance CPE  
August 4, 2004

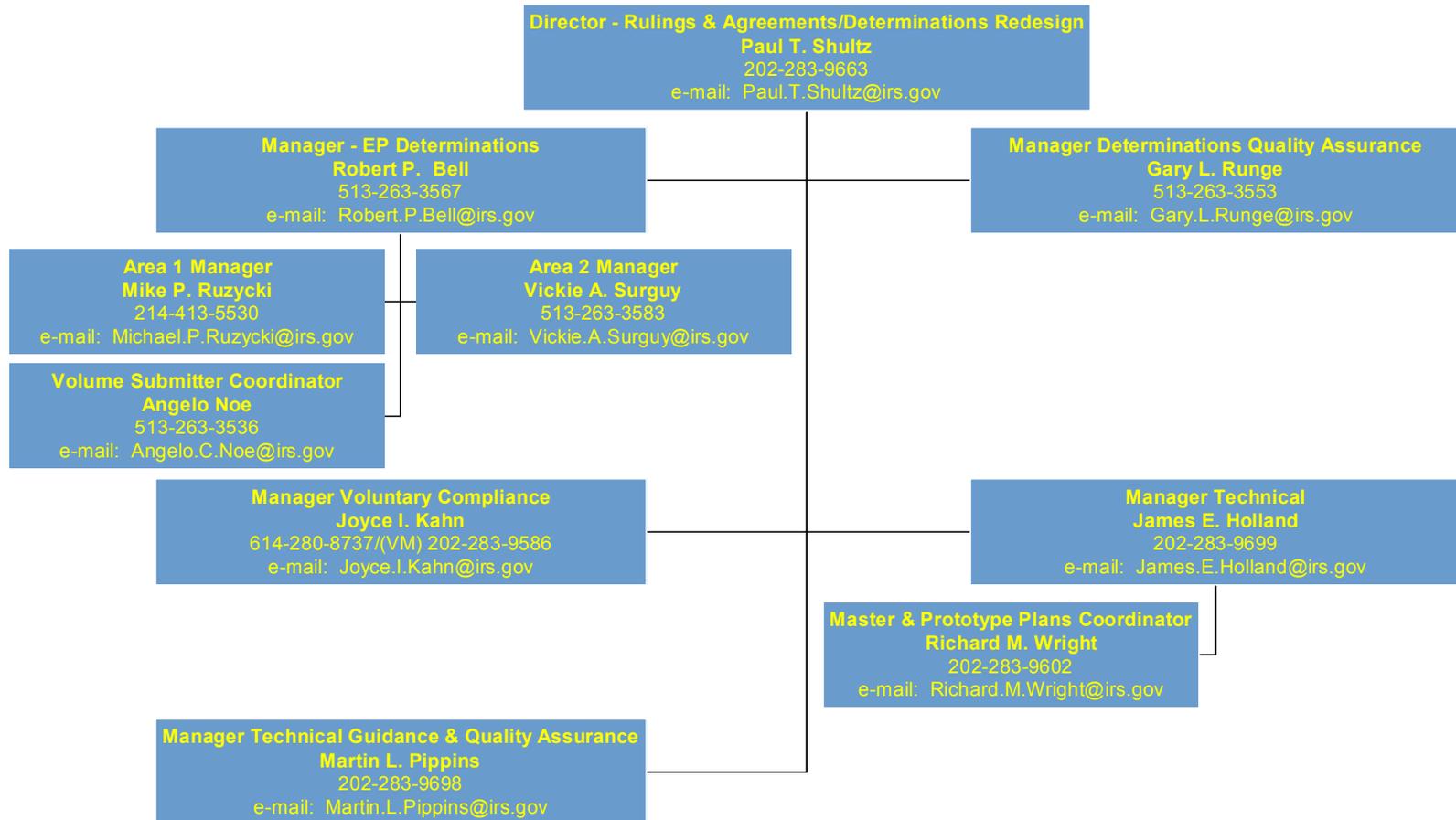


# Background -- EP Rulings & Agreements Status

- Finish up GUST determination letter applications, by mid-Feb. 2005?
- Plan for future determination process, including EGTRRA submissions
- Fine tune Voluntary Compliance unit
- Address abusive tax shelters using plans
- Administer minimum funding rules for DBs



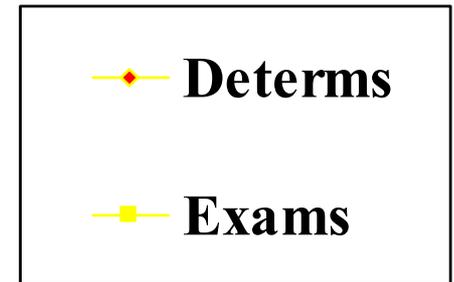
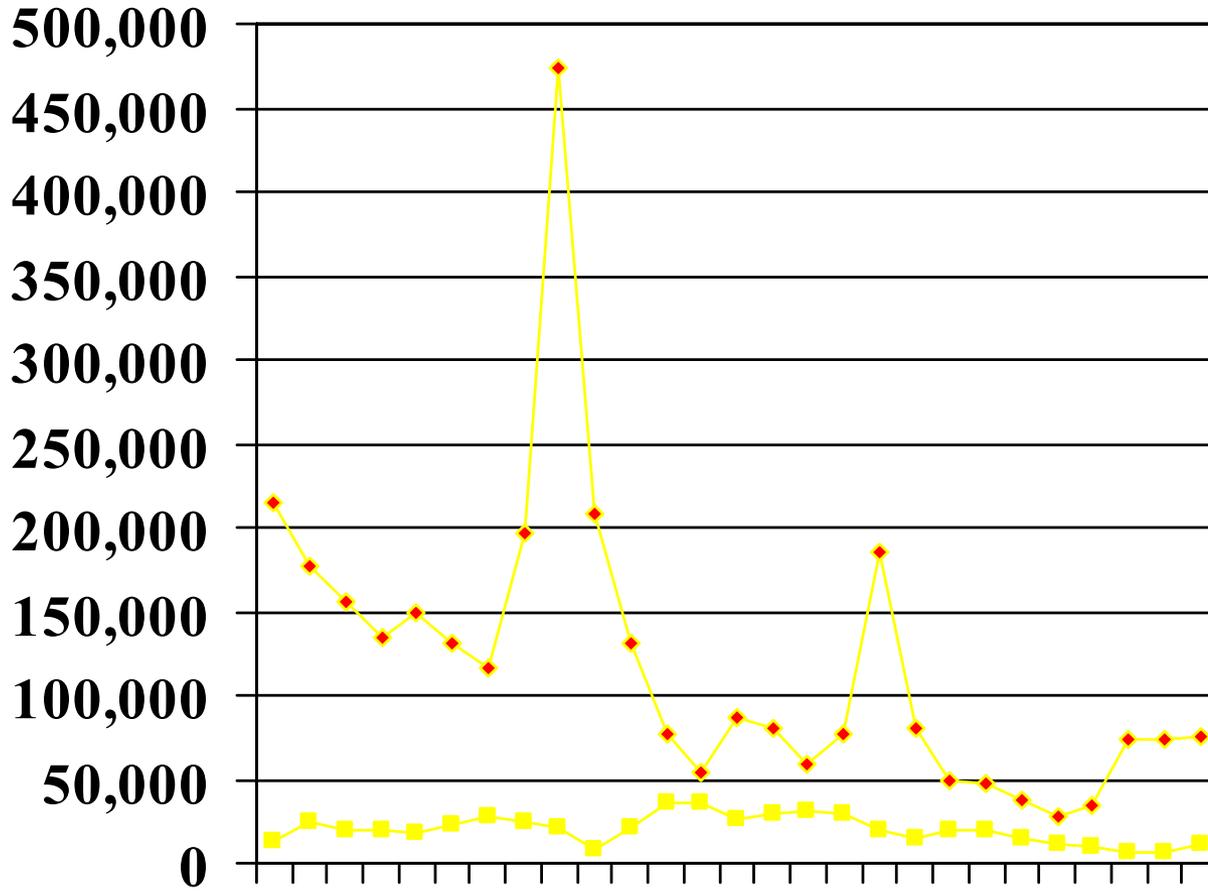
# EP – Rulings and Agreements





Employee Plans

# Determinations and Examinations “at a Glance”



- 1978 ERISA Final Regulations
- 1986 TDR
- 1994 TRA '86
- 2002-04 GUST

1978 1981 1984 1987 1990 1993 1996 1999 2002



# Receipts for FY 2002

Forms 5300/5303	40,000
Forms 5307/6406	25,000
Form 5310	8,000
Total:	73,000



# Receipts for FY2003

Forms 5300/5303	7,200
Forms 5307/6406	59,800
Form 5310	7,000
Total:	74,000



# Projected Receipts for FY2004

Forms 5300/5303	8,000
Forms 5307/6406	59,500
Form 5310	7,500
Total for fiscal year:	75,000



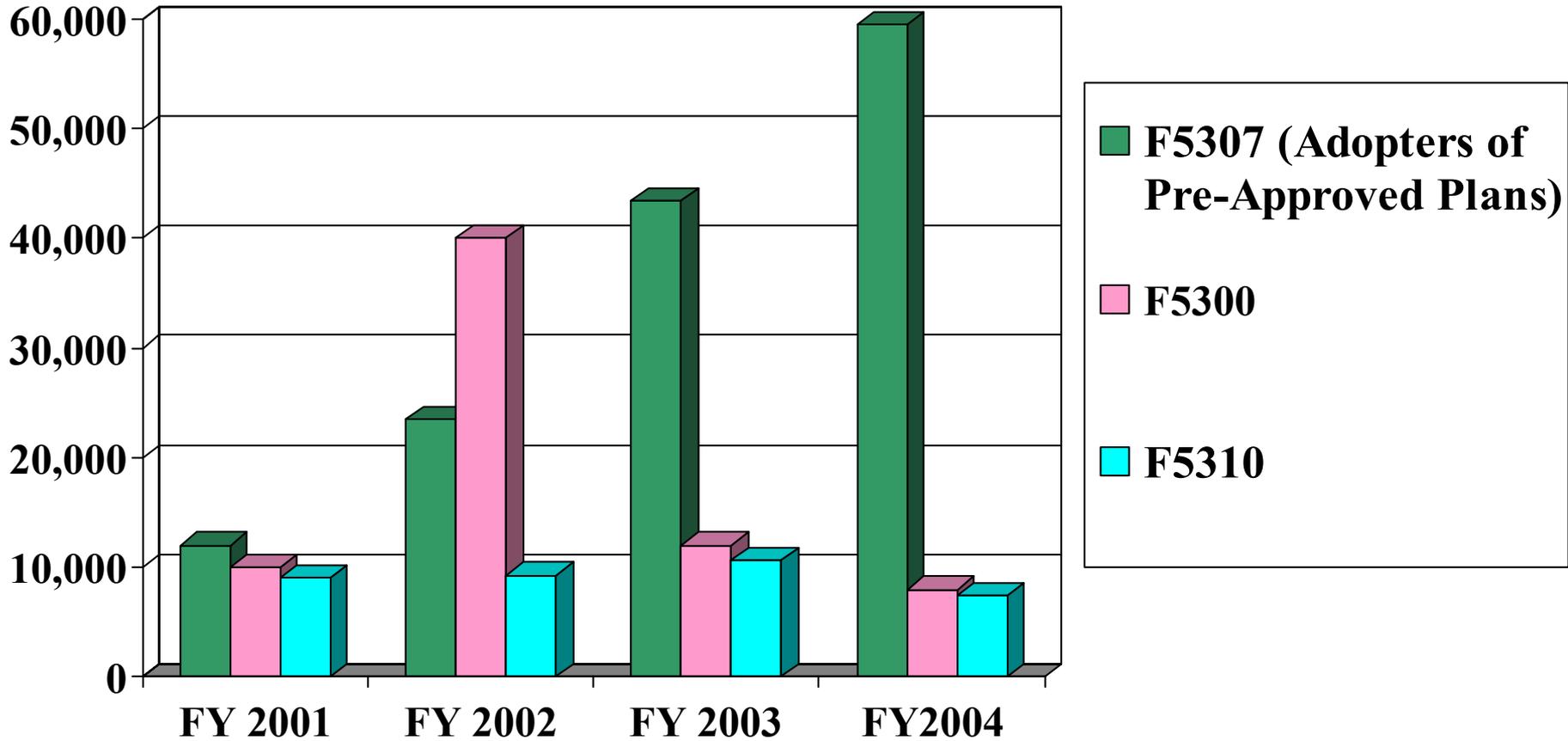
# GUST RAP Receipt Summary (FY2002-04)

	Originally Expected	Projected Actual
Forms 5300/5303	100K	55K
Forms 5307/6406	170K	145K
Form 5310	30K	25K
Total Applications	300K	225K

Note: Normal year = 30,000 total applications



# GUST Actual Receipts





# Rulings & Agreements -- Determination Letter Program

- Why fewer applications?
  - IDPs:
    - Migration to pre-approved plans
  - Pre-approved plans:
    - Optional filing for word for word adopters



# Rulings & Agreements -- Determination Letter Program

- What's happening to the current program?
  - Combination of M&P and VS programs -- Ann. 2004-33
  - Non-EGTRRA substantive amendments get EGTRRA RAP -- Rev. Proc. 2004-25
  - Pre-approved plan effective date changes hurt identical adopter status -- see Draft Rev. Proc. attached to Ann. 2004-33
  - Model plan provisions -- in process



# Rulings & Agreements -- Determination Letter Program

- What's happening to the current program? (continued)
  - Operating manuals -- Checklists on SEPs & SIMPLEs; 403(b); 401(k); reference manual
  - Specialization of personnel? (Determs team)
  - Customer service improvements? (Another team)
  - Quality assurance bulletins on Website
  - Powers of Attorney (Form 2848) Issue? Form 8821 available for unenrolled preparers. Credentialing in the future?



# IRS Pre-Approved Plans (Listed at [www.irs.gov/ep](http://www.irs.gov/ep))

## **Master & Prototype Specimens**

- 200 sponsors
- 1,000 plans total
- Reviewed in Washington D. C.
- Number of adopting employers:  
More than one half million  
(primarily standardized plans)

## **Volume Submitter Plans**

- 350 sponsors submitted plans
- 1,100 plans total
- Reviewed in Cincinnati and Areas
- Projected adopting employers 140,000



# Plan Statistics 2003-04

- DB Plans -- 26,000 plans, 20 million participants (16.8% of private WF), 1.58 trillion assets
- DC Plans -- 840,000 plans, 64.3 million participants (58.2% of private WF), 2.68 trillion assets
- Government Plans -- 2,200 systems, 14 million participants (75.1% of gov. WF), 1.97 trillion assets
- IRAs -- 2.33 trillion assets, 3.5 million returns/deductions (2.7%)
- Social Security -- 42 million beneficiaries



# Staffing for FY 2004

- 155 Agents Total -- All part of Determinations
  - 60 Agents in Cincinnati
    - Some doing technical screening
  - 95 Agents working determinations in their respective geographic locations
    - Some doing technical screening



# Rulings & Agreements -- Determination Letter Program

- Why not file and move cases electronically?
  - Major systems redesign
  - Releases over next few years
  - Started pilot for 5307 in 2003
  - Capture data, maintain electronic file of plan and application that would be available for assignment, review and status updates
  - Eventually, self-service checking on status and filing of application



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# EGTRRA Remedial Amendment Period

- Notice 2001-42
  - Under Senate's parliamentary rules, EGTRRA's Title I of ERISA amendments dropped from EGTRRA because of objection under the Byrd rule ("Byrd droppings") -- EGTRRA was a budget act.
  - Notice 2001-42 -- EGTRRA RAP to end no earlier than end of 2005 plan year.
  - Employers may *not* currently submit for reliance on EGTRRA provisions.
  - No difference whether new plan or amendment of an existing plan.



# EGTRRA Remedial Amendment Period

- Rev. Proc. 2004-25
  - Extends the remedial amendment period under Code §401(b) for non-EGTRRA substantive changes and new plans to the end of the EGTRRA Remedial Amendment Period.
  - Applies to all disqualifying provisions of new plans and plan amendments.



# EGTRRA Remedial Amendment Period

- Rev. Proc. 2004-25 (cont'd)
  - Exact date when the EGTRRA RAP will end will be stated in the future by the IRS.



# Future of the Determination Letter Program

- White Paper in 2001 -- 9 Options:
  - Maintain status quo?
  - Eliminate DLs?
  - Eliminate DLs for individually designed plans?
  - Third-party certification?
  - Self-certification?
  - Annual registration?
  - DLs only on adoption and termination?
  - Staggered approach?
  - Amend after legislation and again after guidance?





# Future of the Determination Letter Program

- Second White Paper May 2003
  - Status Quo
  - Staggered Expiration of RAPs
    - Narrowed alternatives to “status-quo” and a staggered approach so that work would come in on a somewhat uniform and consistent basis.
  - Extra feature: Annual amendment requirement





# Future of the Determination Letter Program

- **Second White Paper -- Staggered RAP**
  - General Rule: 5-year remedial amendment period cycles
    - Plan's RAP cycle based on last digit of the plan sponsor's taxpayer identification number
    - Request DL once every 5 years
    - RAP cycles based on calendar year



# Future of the Determination Letter Program

## ➤ Comments on Second White Paper

- IDP practitioners in general favor staggered approach -- Most providers of individually designed plans wanted to go to the staggered approach.
- M&P sponsors favor status quo -- Providers of pre-approved plans (prototypes and volume submitter) did not like either the “evergreen” approach or the staggered approach.



# Future of the Determination Letter Program

- Development of bifurcated approach
  - ID plans on staggered approach
  - Conference calls with M&P and VS sponsors
  - M&P and Volume Submitter sponsors on *loose* 6-year program -- DCs come in in year 1 and DBs in year 3 of 6 year period
  - Annual amendment requirement? Withdrawn for now, but regs. will continue to require amendments for guidance changes, with models



# Implementation of New Determination Letter Program



## ➤ Game Plan:

- General notice announcing bifurcated approach
- Follow on with draft revenue procedure describing revised DL program for comment -- Summer 2004
- Announcement of plan to combine M&P and VS programs, attaching for comment separate draft revenue procedure describing consolidation of procedures
- Extensive mathematical modeling of new system
- Timeline for implementation



# Implementation of New Determination Letter Program

- IRS released Announcements 2004-32 and 2004-33 in April.
- Announcement 2004-32 describes the bifurcated approach to be taken for determination letter program for the future.
- Announcement 2004-33 provides a draft revenue procedure describing combination of M&P and VS programs.



# Implementation of New Determination Letter Program

- Announcement 2004-32 -- IRS lays out plans for the future of the determination letter program, including for EGTRRA submissions.
- Historical staffing and work flow issues for IRS caused by ebb and flow of submissions.
- Follows from two white papers outlining options and public comments received.



# Implementation of New Determination Letter Program

## ➤ Individually Designed Plans

- Five- year staggered approach, with each employer's RAP ending every five years.
- RAP will depend on the last digit of Taxpayer Identification Number.



# Implementation of New Determination Letter Program

Last Digit of EIN Number

Year To Be Restated

1 or 6

One

2 or 7

Two

3 or 8

Three

4 or 9

Four

5 or 0

Five



# Implementation of New Determination Letter Program

- Individually Designed Plans
  - Example: if 2006 is first restatement year, the next restatement would be 2011, then 2016, etc.
  - Plans need not be amended in other years -- but for legislative and regulatory changes, interim amendments likely will be required to be timely adopted
  - IRS will issue sample or model amendments to assist employers.



# Implementation of New Determination Letter Program

- Individually Designed Plans:
  - Employers will have until the end of RAP to perfect earlier “good faith” amendments.
  - IRS reserves for future whether to impose an annual amendment requirement, as envisioned in second white paper.



# Implementation of New Determination Letter Program

## ▼ Pre-Approved Plans:

- The five-year staggered approach would not apply.
- Proposal for new six-year program not discussed in either white paper.
- All adopting employers will have same RAP, regardless of their document provider. Current 12-month rule will be eliminated.



# Implementation of New Determination Letter Program Pre-Approved Plans:

Year	DC Plans	DB Plans
One/2005	All DC Plans Submitted Based on Current Law	No Action 2011- Employers Restate
Two/2006	IRS Review	No Action
Three/2007	IRS Review	All DB Plans Submitted Based on Current Law
Four/2008	Employers Restate DC Plans	IRS Review
Five/2009	Employers Restate DC Plans	IRS Review
Six/2010	No Action	Employers Restate DB Plans



# Implementation of New Determination Letter Program

## ➤ Pre-Approved Plans:

- IRS recognizes that some flexibility might be required -- hence “loose” 6 year program.
- Individually designed plans “substantially similar” to pre-approved plans -- will receive the 6 year rap applicable to pre-approved plans.
- Need definition of “substantially similar.”



# Implementation of New Determination Letter Program

## ➤ Pre-Approved Plans:

- Employer with individually designed plan may, before end of individual RAP, certify intent to use a pre-approved plan and thereby become subject to pre-approved plan's RAP.



# Implementation of New Determination Letter Program

- Combine M&P and VS Programs:
  - Announcement 2004-33
  - Proposes changes to the M&P and Volume Submitter Programs.
  - Programs will **NOT** be merged into one program, as initially suggested.
  - Prototype program will continue -- and its prohibition on employers from modifying the pre-approved plan documents.
  - Proposal would narrow differences between programs.



# Implementation of New Determination Letter Program

- Combine M&P and VS Programs:
  - Non-standardized prototypes allowed to include cross-tested allocation formulas.
    - Will your client still need the Volume Submitter Plan?
  - “Paired” adoption agreements eliminated as no longer necessary.
    - What did “paired” plans do?



# Implementation of New Determination Letter Program

- Combine M&P and VS Programs:
  - Volume Submitter sponsors *may* amend plans on behalf of adopting employers for statutory or regulatory changes. Reverses rule requiring employers to make such amendments.
  - Comments may be submitted to the IRS by August 2, 2004.



# Implementation of New Determination Letter Program

- Time line for implementation:
  - Plan for publication of draft rev. proc. promised in Ann. 2004-32 during summer 2004.
  - Comment period planned.
  - Final rev. proc. planned by March 2005.



Employee Plans

# Implementation of New Determination Letter Program

Last digit of Plan Sponsor's TIN	Cycle	EGTRRA RAP ends	New RAP ends
1 or 6	A	1/31/07	1/31/12
2 or 7	B	1/31/08	1/31/13
3 or 8	C	1/31/09	1/31/14
4 or 9	D	1/31/10	1/31/15
5 or 0	E	1/31/11	1/31/16



# Implementation of New Determination Letter Program

- Details of the 5-Year RAP Cycle System
  - RAP cycles end one month after the end of the calendar year, *i.e.*, 1/31.
  - Multiemployer and multiple employer plans follow Cycle A.



# Implementation of New Determination Letter Program

- Details of the 5-Year RAP Cycle System (cont'd)
  - Plans of multiple members of controlled group -- cycle based on the EIN of the plan reported on Form 5500. Possible alternative election for controlled group plans.
  - Controlled group -- permitted to elect Cycle A or parent's cycle for all plans of the group
  - Merger or acquisition -- if shortens plan's RAP (e.g., new sponsor has earlier cycle) so that less than 12 months left in cycle after transaction, the current cycle for the plan is extended by 12 months.



# Implementation of New Determination Letter Program

- Details of the 5-Year RAP Cycle System (cont'd)
  - RAP for new plans and discretionary amendments extended to end of 5-year RAP cycle in which RAP under 401(b) regs would otherwise end
  - Cumulative List of Changes in Plan Qualification Requirements published annually around Nov. 15.
  - RAP for legislative/guidance changes = last day of 1st RAP cycle ending after the 2nd calendar year following listing of the change on the Cumulative List



# Implementation of New Determination Letter Program

- Details of the 5-Year RAP Cycle System (cont'd)
  - Cumulative List determines what Service reviews in applications filed between 2/1 of next year and 1/31 of second year after Cumulative List published and also determines reliance
  - “Off-cycle” filings reviewed on basis of current Cumulative List
    - Note: Employer may need to amend again or apply for new letter within regular 5-year cycles (*i.e.*, more than one filing in 5-year period)
  - Earlier good faith amendments for legislative and guidance changes may be required *and* operational compliance



# Implementation of New Determination Letter Program

- Details of the 5-Year RAP Cycle System (cont'd)
  - Determination letters to include “expiration date” -- *i.e.*, end of 5-year cycle
  - Terminating plans must be amended in connection with plan termination -- reviewed based on current law



# Implementation of New Determination Letter Program

- Details of the 6-Year Program for Pre-approved Plans
  - Defined contribution plans
    - Initial EGTRRA opinion/advisory letter application due between February 1, 2005 – January 31, 2006
    - Lead plans due between February 1, 2005 – November 1, 2005
    - Next application due 2/1/11-1/31/12



# Implementation of New Determination Letter Program

- Details of the 6-Year Program for Pre-approved Plans (cont'd)
  - Defined benefit plans
    - Initial EGTRRA opinion/advisory letter application due between Feb. 1, 2007 and Jan. 31, 2008
    - Next application due during 2/1/13-1/31/14



Employee Plans

# Implementation of New Determination Letter Program

- Details of the 6-Year Program for Pre-approved Plans (cont'd)
  - IRS reviews applications based on Cumulative List published in year preceding Feb. 1 opening program
  - Announcement of adopting ER deadline after review of all plans substantially done
  - 2-year window for employers to apply
  - Adopting ER means:
    - Prior adopter (without regard to whether plan modified so as to become IDP) as of end of ER's 5-year cycle, or
    - Certified intent to adopt as of the end of ER's 5-year cycle
  - Adopting ER who adopts the plan within 2-year window is within its cycle



# Implementation of New Determination Letter Program

## Timeline for Implementation

Publish draft Staggered RAP cycle Rev. Proc.	8/2004
90 day comment period for draft Staggered RAP cycle Rev. Proc.	11/2004
Publish final Pre-approved Plan Rev. Proc.	12/2004
Open DC Pre-approved Plan program	2/2005
Lead plans	2/1/2002- 11/1/2006
Publish final Staggered RAP cycle Rev. Proc.	3/2005



# Implementation of New Determination Letter Program

## Timeline for Implementation (cont'd)

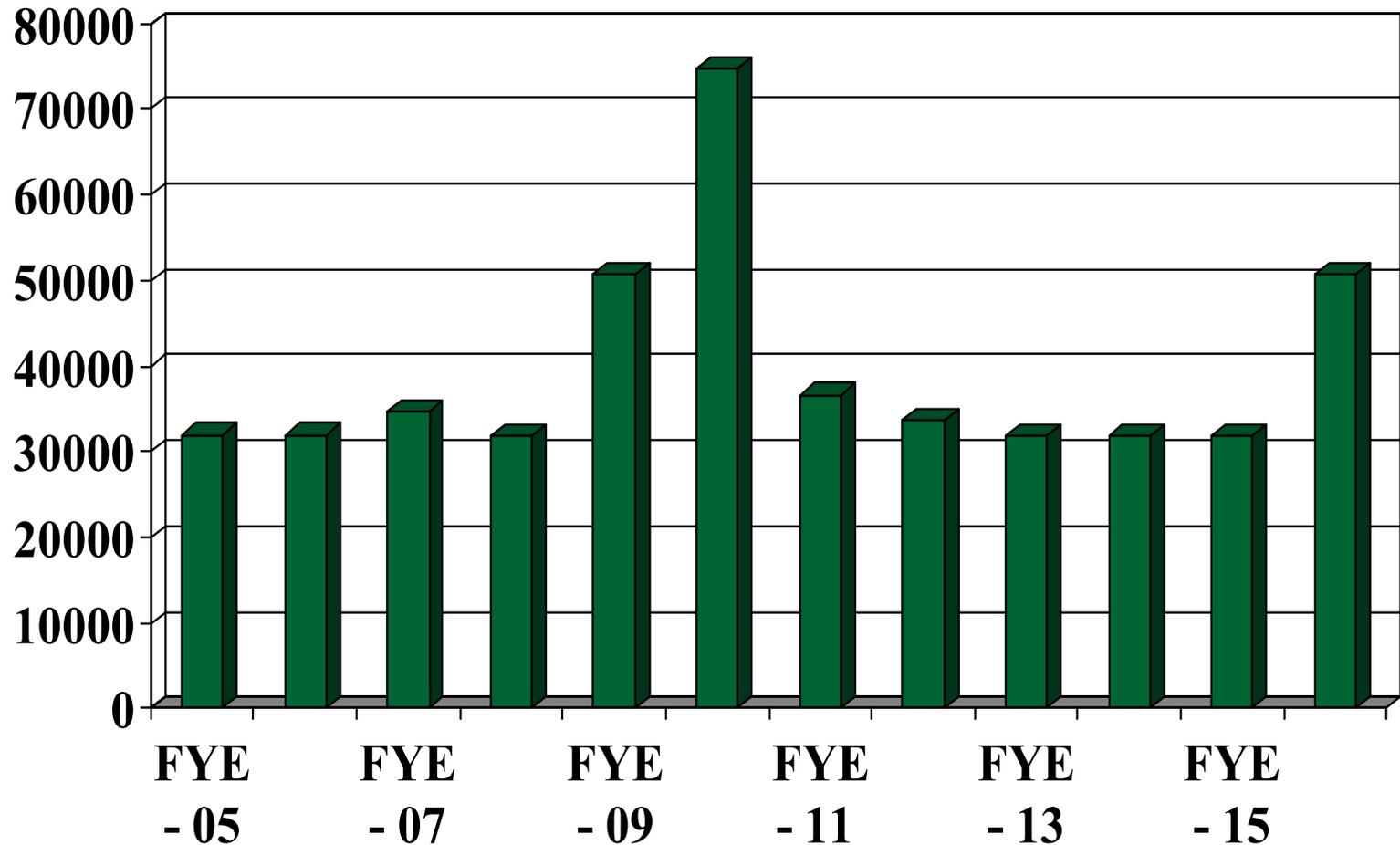
Cycle	Begins	Ends
Open IDP program for 1 <sup>st</sup> cycle	2/1/06	1/31/07
Open DB pre-approved plan prog.	2/1/07	1/31/08
Open IDP program for 2 <sup>nd</sup> cycle	2/1/07	1/31/08
Open IDP program for 3 <sup>rd</sup> cycle	2/1/08	1/31/09
Open IDP program for 4 <sup>th</sup> cycle	2/1/09	1/31/10
Open IDP program for 5 <sup>th</sup> cycle	2/1/10	1/31/11



Employee Plans

# Implementation of New Determination Letter Program

Total Receipts – All Forms





# Contact Information

Share your views with us.

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E-mail is the preferred method of contact.

Technical Questions? Call our Customer Account Services on 1-877-829-5500; phone preferred.

EP Guidance & General Information is available at [www.irs.gov/ep](http://www.irs.gov/ep)

